CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 790

THOMAS C. EDWARDS

vs.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

FILED MARCH 11, 1932

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 790

THOMAS C. EDWARDS

vs.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

INDEX

	Original	Print
Certificate from Court of Claims	1	1
Statement of case	1	1
Question certified	2	1
Judges' signatures	3	2
Exhibit A—Petition	4	2

1 In Court of Claims of the United States

No. M–118

THOMAS C. EDWARDS, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

Certificate

Mr. M. Walton Hendry appeared for the plaintiff.

Mr. Charles B. Rugg, Assistant Attorney General, and Bradley B. Gilman and Erwin N. Griswold appeared for the defendant

Before Chief Justice Booth, Judge Green, Judge Littleton, Judge Williams, Judge Whaley.

Statement of case

The Court of Claims of the United States hereby certifies that the record in the above-entitled case now pending before it discloses the following:

Thomas C. Edwards duly filed his petition in the Court of Claims on the 16th day of April, 1931, praying judgment against the United States for $13,250, as will more fully appear from the petition, a copy of which accompanies this certificate as Exhibit A.

The plaintiff contends that private bill No. 510 of the 71st Congress (46 Stat. 2163), entitled "An act for the relief of Thomas C. Edwards," having been approved by the President became a
2 law under section 7, Article I, of the Constitution, notwithstanding the fact that he approved the bill March 5, 1931, that is to say, subsequent to the final adjournment of the Congress which passed it, but within ten days (Sundays excepted) after it was presented to him.

The defendant contends that this suit is on a contract, and that from the petition it appears that the cause of action, if any, accrued more than six years before the petition was filed in the Court of Claims, and that the court is consequently without jurisdiction because of the provisions of section 156 of the Judicial Code, unless jurisdiction is conferred on the court by a bill which was passed by both Houses of Congress during the third session of the 71st Congress and signed by the President on March 5, 1931, after the final adjournment of the Congress which passed the bill.

In order that we may determine whether we have jurisdiction, we respectfully request an answer to the following question, a decision on which is deemed indispensable to a proper disposition of the cause now before us.

Question certified

QUESTION: Did the act of March 5, 1931 (46 Stat. 2163), become law when it was approved by the President on March 5, 1931, after

the final adjournment on March 4, 1931, of the Congress which had passed it?

It is respectfully requested that the Supreme Court of the United States give appropriate instructions on the above question, certify and transmit the same to the Court of Claims of the United
3 States for its guidance in the further progress of the cause.

FENTON W. BOOTH, *Chief Justice*,
WILLIAM R. GREEN, *Judge*,
BENJAMIN H. LITTLETON, *Judge*,
THOMAS S. WILLIAMS, *Judge*,
RICHARD S. WHALEY, *Judge*.

The Judges who sat on the hearing of the case.

4 *Exhibit A to certificate*

In Court of Claims of the United States

No. M–118

THOMAS C. EDWARDS, PLAINTIFF
vs.
THE UNITED STATES, DEFENDANT

PETITION

Filed April 16, 1931

To the Honorable Court of Claims:

The petition of Thomas C. Edwards respectfully represents:

That he is a citizen of the United States, with his principal place of business at Alvin, Texas, and brings this suit pursuant to act of Congress approved March 5, 1931, reading as follows:

"PRIVATE—No. 510—71ST CONGRESS
"An act for the relief of Thomas C. Edwards

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claim of Thomas C. Edwards growing out of losses suffered under contracts of June 13, 1917, for delivering hay to the Quarter
5 master Corps, Fort Sam Houston, Texas, is hereby referred to the United States Court of Claims with jurisdiction to hear the same to judgment and with instructions to adjudicate the same upon the basis of the losses suffered due to conditions arising out of the late war, to the cancellation of orders given by the Government for the delivery of the hay, and the encountering of a severe drought."

Approved March 5, 1931.

That under date of June 13, 1917, plaintiff entered into a contract with the United States for delivering hay to the Quartermaster

Corps, Fort Sam Houston, Texas, and other points where directed by said contract, copy of which contract is hereto attached, made a part hereof and marked "Plaintiff's Exhibit No. 1."

That in accordance with the terms of said contract the contracting officer for the defendant under date of June 19, 1917, issued a written call upon plaintiff, known as call No. 26, for the delivery of 1,324,000 pounds of hay, delivery to begin July 1, 1917, as specified in said contract, and likewise under date of June 20, 1917, issued call No. 27 for 1,420,000 pounds to be delivered three cars daily "commencing July 1, 1917." Upon receipt of said calls plaintiff immediately made preparations for delivery of all hay required amounting to six carloads per day as specified, and actually had a portion of the cars loaded on the track ready for delivery when the defendant wired the plaintiff June 25, 1917, cancelling said calls and directing that no deliveries be made until July 15, or fifteen days subsequent to the date required in the contract for beginning
6 deliveries. The plaintiff was thereupon forced to cancel the arrangements which he had made for securing the hay and before he was able to make new purchases a severe drought set in over that portion of the country from which he expected to get the hay.

By reason of the cancellation of said orders, a severe drought in that portion of the country from which plaintiff expected to get the hay to fill said contract and war conditions then existing plaintiff suffered the following losses:

Item 1. Difference between the actual cost of the hay delivered by plaintiff under said contract and the amount received therefor from the defendtnt	$5,476.20
Item 2. Difference between the price plaintiff could have bought the said hay but for said conditions and the actual cost to plaintiff	5,768.80
Item 3. Additional expenses and losses incurred under said contract, as follows:	
Automobile repairs and gas	275.00
Two men, hay buyers, salary	600.00
Expenses of traveling for the above two hay buyers	480.00
Telegrams, phones, stationery, and postage	150.00
Overhead, including bookkeeper, stenographer, and manager's time	500.00
Making a total loss of	13,250.00

7 due to the causes specified in the aforesaid act of Congress.

That the plaintiff is the sole owner of this claim and is the only party interested therein, and no assignment or transfer of this claim, or any part thereof or interest therein, has been made.

That the plaintiff has at all times borne true allegiance to the United States, and is justly entitled to the amount claimed from the United States, after allowing all just credits and setoffs.

Wherefore, plaintiff prays that the court may find that he is entitled to the sum of $13,250.00, and that judgment be entered against the United States for the total sum of $13,250.00; that the

court may grant such other relief as the nature of the case may require, or the Court may deem proper.

THOMAS C. EDWARDS,
By M. WALTON HENDRY,
Attorney in Fact.

[*Duly sworn to by M. Walton Hendry; jurat omitted in printing.*]

8 EXHIBIT NO. 1 TO PETITION

CONTRACT FOR SUPPLIES

(To be used for all purchases of supplies, fuel, forage, subsistence, etc.)

Between Captain S. B. Belden, Quartermaster Corps, U. S. ~~A.~~ R., and Thos. C. Edwards, Alvin, Texas, for prairie feeding and bedding hay required at Ft. Sam Houston and Aviation, Texas, and other camps and stations in the eastern district.

Date of contract: June 13, 1917; contract expires September 30, 1917.

Sureties: The Hartford Accident and Indemnity Company, $11,000.00.

Appropriation and amount: S. S. & T., Q. M. C., f. y. 1918, $41,700.00.

These articles of agreement entered into this 13th day of June, nineteen hundred and seventeen, between Captain S. B. Belden, Reserve Quartermaster Corps, United States ~~Army,~~ of the first part, for and in behalf of the United States of America, and Thos. C. Edwards (a corporation existing under the laws of the State of ------), of Alvin, in the county of Brazoria, and State of Texas (hereinafter designated as contractor), of the second part, WITNESS: That the said parties do hereby mutually covenant and agree to and with each other—referring to any advertisement, circular to bidders, and specifications hereto attached or referred to herein, or pertaining hereto, and to samples referred to herein or in said advertisement, circular to bidders, or specifications, which, so far as they are applicable, form a part of this contract—as follows:

9

1. That the said contractor shall furnish and deliver during the period commencing July 1, 1917, and ending September 30, 1917, the following supplies for or at the military stations, in the manner and at the prices stated in this contract; deliveries to be made in such quantities, at such times, and in such bins, sheds, bunkers, or other places of storage at the military stations named, as may be required by the receiving officer or agent of the Quartermaster Corps, unless the minimum quantities to be delivered are stated, or different conditions as to place and time of delivery are expressly set forth in this contract, viz:

F. o. b. cars Ft. Sam Houston and Aviation, Texas, three million (3,000,000) pounds, new crop, prairie feeding hay equal to sample submitted at fifty-eight and a quarter cents (.5825), and two million five hundred thousand (2,500,000) pounds at sixty-five and one-half cents (.655) per one hundred pounds.

Also six hundred and fifty thousand (650,000) pounds for delivery f. o. b. cars other stations in the eastern district at seventy and a half cents (.705) per one hundred pounds, except at Corpus Christi and Kingsville, at which points the price shall be sixty-five and one-half cents (.655) per one hundred pounds.

Also seven hundred thousand (700,000) pounds of prairie bedding hay, f. o. b. cars nearest railroad stations to camps and stations in the eastern district at fifty-one and a half cents (.515) per one hundred pounds, except at Corpus Christi and Kingsville, Texas, at which points the price shall be forty-six and one-half cents (.465) per one hundred pounds.

All the above subject to inspection and acceptance at points of consumption.

2. That it is mutually agreed and understood between the said parties that the separate quantities of supplies to be delivered under this contract may be increased or decreased at the option of the United States, at any time or times during the continuance of the contract, not exceeding the percentages thereof indicated in the circular to bidders hereto attached; and further, if during the period of the contract the troops or garrison be withdrawn, in whole or in part, from the post or station, the number of animals thereat reduced, an electric light plant installed thereat, or other radical change in the service be made, on account of which the supplies, or any portion thereof, will not be required, quantities to be delivered under this contract may be modified accordingly. In case of change in quantity required, by increase or decrease, notice in writing of such change will be served upon the contractor by the contracting officer.

3. That for and in consideration of the faithful performance of the stipulations of this contract, the contractor shall be paid, at the office of the contracting officer, or by a disbursing officer designated by him to make payments, the prices stipulated in this contract for those supplies delivered and accepted. Payments to be made monthly, as a rule, if practicable, unless otherwise provided in this contract, or in the circular to bidders hereto attached, or as soon after the acceptance of each delivery as is practicable and funds on hand for the purpose will admit.

4. That in the performance of this contract the said contractor shall not, directly or indirectly, employ any person undergoing sentence of imprisonment at hard labor which may have been imposed by a court of any State, Territory, or municipality, having criminal jurisdiction, nor permit such employment by any person furnishing labor or materials to said contractor for use in the fulfillment of this contract.

5. That it is expressly agreed and understood that this contract shall be noneffective until an appropriation adequate to its fulfillment is granted by Congress and is available, except in so far as is necessary to provide for the necessities of the service as authorized by section 3732 of the Revised Statutes of the United States. However, in order to provide for the necessities of the service as authorized by section 3732 of the Revised Statutes of the United States, it is agreed that the supplies specified herein, so far as authorized by said section, shall be delivered at the times and manner required under this contract, and that payments for the supplies so delivered and accepted shall be made as soon as it is practicable after funds are available under appropriations therefor by Congress.

6. That in case of the failure of the contractor to perform any part of this contract, the contracting officer, or his successor, shall have the right to supply the deficiency by procurement in open market, or otherwise, purchasing any of the supplies so required
12 at such place as he may elect, with a view to obtaining the same promptly and at the same time endeavoring to secure fair and reasonable prices (the articles procured to be the kind herein specified, as nearly as practicable), at the expense of the contractor; and in case failure should occur prior to the time fixed for performance of all parts of the contract the right is hereby reserved to the United States to elect whether the contractor shall be permitted to continue performance as to such remaining part (deficiency by reason of any further failure to be supplied as above) or whether the entire unperformed part shall be procured at the expense of the contractor. In event, however, of the granting of additional time for performance, the cost of inspection and other expenses and damages to the United States over what would have been incurred had performance been accomplished by the time originally fixed therefor, if any, except in so far as the same may arise from delays for which the United States is responsible, as determined in each of those particulars by the officer in charge or higher authority, shall be charged to the contractor and may be deducted from any money due or to become due said contractor from the United States: Provided, That where additional time has been granted, the United States shall also have the right to cause the remaining part of the contract, or any portion thereof, to be taken from the contractor whenever, in the opinion of the officer in charge, reasonable and satisfactory progress is not being made, and to secure completion of the contract at the expense of the contractor, including charges as above on account of delays.

13 7. That the contractor shall hold and save the United States, and all officers and agents thereof, harmless from and against all demands of any nature or kind for or on account of the use of any patented article, combination, or process which may affect the supplies delivered under this contract.

8. That neither this contract nor any interest therein shall be transferred to any other party or parties, and in case of such

transfer the United States may refuse to carry out this contract either with the transferor or the transferee, but all rights of action for any breach of this contract by said contractor are reserved to the United States.

9. That no Member of or Delegate to Congress, or Resident Commissioner, nor any person belonging to or employed in the military service of the United States is, or shall be, admitted to any share or part of this contract, or to any benefit which may arise herefrom, but, under the provisions of section 116 of the act of Congress approved March 4, 1909 (35 Stats. L. 1088), this stipulation, so far as it relates to Members of or Delegates to Congress or Resident Commissioners, shall not extend, or be construed to extend, to any contract made with an incorporated company for its general benefit.

10. That the following changes or alterations were made in this contract before it was signed by the contracting parties, viz: Article 11 deleted, also letter "A" in first line of brief changed to letter "R," and word "Army" in third line of preamble changed to word "Reserve."

11. ~~That this contract shall be subject to the approva of the and such approval when given shall relate back and be construed as operative from the date specified in this contract as the date of its execution, and the rights of the parties shall be determined accordingly.~~

In witness whereof, the parties aforesaid have hereunto placed their hands the date first hereinbefore written, and the contracting officer hereby certifies that if the contractor is a corporation that said officer has satisfied himself of the authority of the person signing the contractor's name to bind the contractor and has waived the requirements of Army Regulations as to the filing of written evidence of said authority.

Witnesses:

JOHN W. ELLIOT as to S. B. BELDEN,
Captain Quartermaster Corps,
U. S. R.

A. BREYER as to THOS. C. EDWARDS

(Executed in triplicate)

PROPOSALS FOR FUEL, FORAGE, BEDDING, GASOLINE, MINERAL OIL, AND FUEL OIL

WAR DEPARTMENT,
HEADQUARTERS SOUTHERN DEPARTMENT,
OFFICE OF DEPARTMENT QUARTERMASTER,
Fort Sam Houston, Texas, May 15, 1917.

1. The following is a copy of an advertisement issued from this office and published in newspapers:

2. Office Department Quartermaster, Fort Sam Houston, Texas.

Sealed proposals will be received here until 11.00 a. m., June 5, 1917, for furnishing wood, smithing coal, gasoline, mineral oil, crude oil, distillate, forage, and bedding required at Southern Department stations and camps, during the period beginning July 1, 1917, and ending September 30, 1917. Information furnished upon application.

3. Proposals will be received and opened at this office at 11.00 o'clock a. m., June 5, 1917. Proposals will not be received at camps or stations.

4. One copy of these specifications should be securely attached to each copy of proposal, and be mentioned therein as comprising a part of it.

5. Proposals are required in triplicate. Envelopes containing proposals should be marked to show stations and camps bid upon, kind of supplies and date of opening.

6. It is preferred that proposals specify delivery at stations and camps, where supplies are required (but under paragraph 38, hereof, alternate proposals may be made for delivery f. o. b. cars at points other than the stations and camps.

7. It is intended to provide a three months' supply of forage and bedding for all public and private animals in the hands of troops along the Mexican frontier, gasoline for all motor-propelled vehicles with troops during the same period, mineral oil for illuminating and fuel purposes, wood and smithing coal. On account of frequent and unforseen changes among the troops on the border, it is
16 impracticable to state the specific quantities of each kind of these supplies that will be required at the various stations between Brownsville, Texas, and Yuma, Arizona. The border has been divided into two districts, viz: "The eastern district," covering all stations between Brownsville, Texas, and Mafeta, Texas, inclusive, and in addition thereto, Fort Sam Houston, Aviation Post, and Corpus Christi, Texas: "the western district," covering all stations between Mafeta, Texas, and Yuma, Arizona, inclusive, and in addition thereto, Deming, N. M., and remount station, Ft. Bliss, Texas, and bidders are requested to submit separate and distinct bids for each district.

8. A proposal may include all stations and camps in a district at a uniform price, or may provide for delivery at any of the border stations and camps as given below, or f. o. b. cars at the R. R. stations nearest thereto, at specific rates. Bidders may limit the quantities of supplies they will furnish, or bid on unlimited quantities, with the understanding that the total amounts mentioned in par. 10 below, as estimated quantities, will not be exceeded, but it will be understood and so stated in contracts, that the Government reserves the right to increase or diminish by 20% any quantities, specifically contracted for and that if troops or animals are withdrawn in whole or in part from any camp or station for which contract for specific quantities has been executed, undelivered quantities may at the option of the

Government be ordered delivered elsewhere, and the difference in freight rates, if any, between point of original shipment, contract point of delivery, and ultimate destination, adjusted in settlement for such supplies. In cases of increase or decrease written notice
17 of such change will be served upon the contractor by the department quartermaster, or other contracting officer, or their authorized representative.

9. Attention of bidders is invited to the fact that the requirements of the Government are specifically set forth herein. Any bid containing propositions or conditions in conflict with these requirements will not be considered. Proposals limiting time of acceptance and award to any period less than twenty-five (25) days, or that would, in any way take the control of awards and deliveries as to time and quantities, out of the hands of the Government, will be rejected. Once a proposal has been submitted by a bidder, it can not be modified, neither can it be withdrawn, until reached at the time of opening. (See paragraph 16.) If a bidder desires to change his proposal after having submitted same, he should submit a new bid, complete in form, and show thereon that it is to take the place of the one already submitted and which it is desired to withdraw from reading. No telegraphic bids will be considered, nor requests for changes in bids entertained.

10. The total quantities of fuel forage, gasoline, and mineral oil estimated to be required each month are as follows:

EASTERN DISTRICT

Oats	11,000,000 pounds.
Hay	9,000,000 pounds.
Bedding	700,000 pounds.
Gasoline	95,000 gallons.
Mineral oil, illuminating	7,000 gallons.
Mineral oil, fuel	25,000 gallons.
Distillate	100,000 gallons.
18 Crude oil	15,000 gallons.
Wood, hard (border stations only)	18,000 cords.
Smithing coal	60,000 pounds.

WESTERN DISTRICT

Oats	8,500 000 pounds.
Hay	10,900,000 pounds.
Bedding	1,950,000 pounds.
Gasoline	84,000 gallons.
Mineral oil, illuminating	13,500 gallons.
Distillate	25,000 gallons.
Wood, hard	6,575 cords.
Smithing coal	52,500 pounds.

11. The following stations and camps are now garrisoned by troops, for whom these supplies are required:

EASTERN DISTRICT

Brownsville, Texas.
Harlingen, Texas.
Mercedes, Texas.
Llano Grande, Texas.
Rabb's ranch, Texas (Santa Maria).
Donna, Texas.
Pharr, Texas.
San Benito, Texas.

EASTERN DISTRICT—Continued

Kingsville, Texas.
Fort Ringgold, Rio Grande, Texas (Sam Fordyce).
Sam Fordyce, Texas.
Corpus Christi, Texas.
McAllen, Texas.
Mission, Texas.
Laredo, Texas.
Dolores, Texas.
Eagle Pass, Texas.
Del Rio, Texas.
Aviation Post, Texas.
Camp at Fort Sam Houston, Texas.
Leon Springs Target and Maneuver Reservation, Leon Spring, Texas.

19 WESTERN DISTRICT

Marfa, Texas.
Presidio, Texas.
Ruidosa, Texas.
Everett's ranch, Texas.
Sierra Blanca, Texas.
Boquillas, Texas.
Lobo, Texas.
Marathon, Texas.
Terlingua, Texas.
Glenn Springs, Texas.
Polvo, Texas.
Camp at Fort Bliss, Texas.
Fabens, Texas.
Fort Hancock, Texas.
Yaleta, Texas.
Clint, Texas.
Canutillo, Texas.
El Paso, Texas.
Las Cruces, N. M.
Mount Riley, N. M.
Hermanas, N. M.
Hachita, N. M.
Las Cienegas, N. M. (Hachita).
Deming, N. M.
Columbia, N. M.
Douglas, Arizona.
Forrest Station, Ariz.
Naco, Ariz.
Warren, Ariz.
Nogales, Ariz.
Lochiel, Ariz.
Yuma, Arizona.

12. Two sets of contracts will be made by this office; one set for the eastern district and one set for the western district; therefore a bidder who desires to submit proposals covering all stations and camps should make two sets of bids; one set to include the camps and stations of the eastern district and another set for all camps and stations of the western district.

13. In contracts to be made under this advertisement the particular kind or class or description of supplies offered by the bidder will be named specifically, followed by the words "or of equal quality," so that should a bidder offer a grade of forage grown in only one locality and the crop in this locality be a failure, he will be required to go into other markets to purchase supplies equal to the one named, to fulfill his contract.

20 14. Information with regard to supplies for which proposals are invited will be furnished upon application to all persons desiring it, but no person belonging to or employed in the military service will render assistance in preparation of proposals.

15. No person will be informed, directly or indirectly, of the name of any one intending to bid, or not to bid or to whom information in respect to proposals has been given.

16. Before the time of opening, any bidder may, without prejudice, withdraw from competition, by giving written notice of his decision to the officer holding his bid, and when his bid is reached at the opening it will be returned to him or his authorized agent, unread.

Specifications for forage and bedding

17. Bran: To be wheat bran of the highest grade of the locality, best quality, coarse, fresh, and free from dirt and other impurities.

To be delivered in good, strong, new burlap sacks, containing about one hundred (100) pounds each; the weight of the sacks to be deducted, and the sacks to become the property of the United States.

18. Hay, feeding: To be of the highest grade of the locality. Timothy or equal preferred, best quality, properly cured, bright, natural color, moderately fine, sound, crisp, fresh, sweet smelling, the flowering heads of the grasses present, and free from weeds, sticks, dust, and other foreign matter.

21 Delivery to be made in bales. Each bale shall be secured with at least two (2) wires, not less than 16 gauge, and weigh not less than sixty-five (65) nor more than one hundred and twenty-five (125) pounds. A sample of not less than 25 lbs. of the hay which the bidder proposes to deliver, must be sent to this office, all charges prepaid, before the hour set for opening of bids. Samples to be marked so as to show the name of the bidder.

19. Oats: To be graded oats of the best quality; to be sound, well developed and well matured, bright, sweet, clean, and practically free from other grains; to test not less than thirty-two (32) pounds for unclipped and thirty-four (34) pounds for clipped to the measured bushel, and to be dry to the extent of containing not to exceed 12 per cent of moisture; bidders to specify the color of the oats bid upon.

To be delivered in good, strong, new burlap sacks, containing about one hundred and twenty-five (125) pounds each; the weight of the sacks to be deducted, and the sacks to become the property of the United States.

20. Bidders are required to state, separately, the price at which they will deliver white, black, red or mixed oats, in conformity with the above specifications; and samples or not less than one bushel each of the oats which bidders intend to deliver, i. e., white, black, red, or mixed oats, must be submitted with the proposals. These samples to show the grade of oats, which bidders propose to furnish. The samples should be properly marked with the name of the bidder and must be in this office before hour of opening of bids; all transportation charges to be prepaid.

22 21. Hay for bedding: To be prairie, wild, or other hay, good quality, properly cured, bright, natural color, moderately fine, sound, crisp, clean, fresh, sweet smelling, and free from weeds, sticks, dust, and other foreign matter.

Delivery to be made in bales. Each bale shall be secured with at least two (2) wires of not less than 16 gauge, and weigh not less than sixty-five (65) nor more than one hundred and twenty-five (125) pounds.

22. Straw: To be rye, oat, or wheat straw, of the highest recognized grade of the locality, best quality, bright, clean, dry, sound, long, properly cured, and free from chaff, thistle, weeds, and other foreign substances.

Delivery to be made in bales. Each bale will be secured with at least two (2) wires of not less than 16 gauge, and weigh not

less than sixty-five (65) nor more than one hundred and twenty-five (125) pounds.

23. Bidders may submit proppsals for delivery of hay and bedding at railroad points other than the camps and stations at which required, in which case the density of compression of the hay and bedding must be stated; the cost of transportation from place of delivery to the camps and stations will be considered in making awards.

24. As a rule, where proposals are invited for "hay (for bedding) or straw," no contract for straw will be made when the lowest bid for straw exceeds the lowest bid for hay.

25. Bids for forage and bedding should be at a specific rate per 100 pounds net.

23 Specifications for motor gasoline

26. Gasoline, motor: To be motor gasoline of first quality, at least 66° gravity, water white, clear and sweet. Where delivery is made in drums or barrels, the containers will be returned to the contractor at point of delivery on Government bill of lading, or otherwise, without expense to him.

Bidders are required to submit samples, transportation charges prepaid, of not less than one gallon of the gasoline which they propose to furnish.

Specifications for mineral oil for illuminating purposes

27. Mineral oil: Flash point must not be under 120° F. when taken in the Tagliabue closed cup. Tests to be made at point of delivery. The oil delivered in accordance with these specifications must be best refined "water white" mineral oil (kerosene) acid-free, and practically sulphur free. It must burn in suitable lamps without smoking or appreciable odor, without undue incrustation of the wick, and without any very appreciable diminution in illuminating power after long, continued burning.

The illuminating power of the oil must be equal to that of the best grades of kerosene. All illuminating oil to be delivered in cans and cases.

24 Specifications for mineral oil for fuel purposes

28. To be of best quality, and to be water white color, or flash point not under 115 degrees Fahrenheit.

Bidders will be required to submit samples, transportation charges prepaid, of not less than one (1) quart of the oil which they purpose to furnish. These samples will be submitted to this office in time to permit of test being made prior to opening of bids.

Specifications for distillate

29. Distillate: To be No. 1 engine distillate, 52–54 degrees gravity, pure, and of best quality.

Specifications for crude oil

30. Oil, crude: Must have a gravity of not less than 14 degrees Baumé at a temperature of 60 Fahrenheit.

Specifications for cans, cases, barrels, and drums

31. Cans: Each can to be of five (5) gallons capacity, made throughout of tin, strictly first quality for the purpose required, top to be equipped with closed screw cap, and can to be suitable in every respect to insure safe transportation, and storage of gasoline and mineral oil without waste.

32. Cases: Cases to contain two (2) cans each, and be made of suitable lumber, dressed on outside, and sufficiently strong to insure safe transportation and storage of gasoline and mineral oil without waste.

33. Barrels and drums: Barrels and drums to be of about fifty (50) gallons capacity each, made of first-class material throughout, suitable to insure safe transportation and storage of gasoline and mineral oil without waste.

34. Bulk: When delivered in bulk, the contractor will be required to deliver the gasoline and mineral oil into storage tanks, (provided by the Government) where located.

Specifications for wood

35. Wood: To be sound, dry, not burned or charred, free from small limbs and brush, sawed or cut in four foot lengths and split to convenient size, but not exceeding six inches in diameter.

Delivery will be made in such quantities and at such times, and be properly piled in such wood yards, or other places of storage as may be required by the receiving officer or agent of the Quartermaster Corps.

The following will be considered hard wood: Ash, cypress, elm, hickory, locust, maple, oak, walnut, chestnut, white beech, American horse bean, mountain laurel, swamp whortle, mesquite, etc.

The following will be considered soft wood: Cedar, fir, hemlock, pine, poplar, redwood, spruce, butternut, linden, pinnon, basswood, cottonwood, etc. Mixtures of hard and soft woods will be classed for purpose of award as soft wood.

The price for wood should be stated per cord of 128 cubic feet f. o. b. cars, stacked or otherwise. Bidders will state the kind of wood which they propose to furnish and per centage of each kind, if mixed.

Specifications for smithing coal

36. Coal, smithing: To be best quality Cumberland, or equal, suitable for heavy welding, and free from impurities and fine dust. When delivered in sacks, the sacks are to be good, strong new burlap sacks, containing about 100 pounds each, the weight of the sacks to be deducted and the sacks to become the property of the United States. Bidders should state price per 100 pounds.

General instructions

Proposals

37. As a general rule awards will be made to the lowest responsible bidders for the best and most suitable articles, beginning with the lowest in price and continuing in order until the quantity advertised for, or such part thereof as may be required, shall have been allotted; in case of tie bids the awards will be divided equally among such bidders, or if they mutually prefer, will be decided by lot.

38. It is the purpose to require delivery of the supplies in such quantities and at such time or times during the period mentioned, as may be required by the contracting or receiving officer of
27 the Quartermaster Corps. If in the opinion of a bidder, it would be to the advantage of the Government and would secure lower prices for the supplies herein referred to by making deliveries at times and places and in quantities other than those herein stated, such bidder may submit an alternate proposal for delivering the supplies under conditions as to place and time of delivery and quantities to be delivered different from those mentioned in the circular, but no proposition for the delivery at one time of greater quantities of any article than can be properly cared for will be considered.

39. The Government reserves the right to accept or reject the whole or any part of a bid.

Guaranties

40. When the value of the supplies is $500.00 or more, the proposal must be accompanied by a guaranty in due form. The guaranty is to the effect that if proposal be accepted, in whole or in any part whatsoever, within sixty days from the date of opening, the bidder will promptly enter into contract for the supplies, and if required, will furnish good and sufficient bond to secure performance of the contract, or if written contract be not required, will furnish the supplies so awarded, and that in event of failure to enter into contract and give bond, or to furnish the supplies, if written contract is waived, the guarantors will pay to the United States the amount of the loss it may sustain by reason of the default.

41. Each guarantor, when a person, must justify in a sum not less than 15 per cent of the amount involved in the proposal, but in no

case for less than $200.00. The notes at the bottom of the
28 guaranty form should be carefully complied with. The certificate of sufficiency of guarantors to be signed by a judge or clerk of a U. S. court or district attorney, etc., need not be executed in triplicate, as a single certificate on one number of the bid will suffice. When a single certificate is executed, each of the other two numbers of the proposal should contain reference to the fact that this certificate is executed on one number only.

42. Guaranty by a qualified surety company will be received in lieu of guaranty by individuals, in which case, the justification of the guaranty form may be omitted.

43. At the option of bidders, certified checks (15 per cent of the amount involved in the proposal) may be deposited in lieu of written guaranty. The conditions of the guaranty will be held to be the same. These checks will be returned to the bidders when no longer required to protect the interests of the Government. When checks are furnished, notation of the fact should be written on the proposal, giving dates, amounts, number of checks, and the name of the bank on which drawn.

44. Bids not guaranteed in accordance with the above requirements will not be considered.

Inspection

45. An inspection of the supplies at the camps or stations will be made by an officer or agent designated for the purpose. If the contractor objects, in writing, to the action of an inspector, a board of officers shall be convened at once to determine whether the supplies tendered are receivable, and its report when duly ap-
29 proved by the camp or station commander, or other competent authority shall govern. The Government shall not be responsible for supplies prior to acceptance.

Payment and retained percentages

46. Payment for supplies delivered and accepted, shall be made from time to time, monthly as a rule, and in making partial payment, when no bond is furnished (the amount involved being less than $500.00), 10 per cent of the amount of each account shall be retained until completion of the succeeding delivery called for, and then paid. In cases where a bond is furnished, no percentages will be retained.

Contracts and bonds

47. The amount of the penalty of the bond to be furnished by the successful bidder will be equal to at least 10 per cent of the full sum of the consideration of the contract.

48. A firm will not be accepted as a surety, nor will a partner be accepted as a surety for a copartner, nor for a firm of which he is a member. An officer of a corporation will not be accepted as a surety for such corporation.

49. Bonds guaranteeing contracts are not acceptable where one member of a partnership or an officer of a corporation enters into a contract in his individual name and procures other members of the partnership or other officers of the corporation to act as sureties on the bond, unless the contract is really to be performed by the individual himself and not by the partnership or corporation.

30 50. Bonds with corporate sureties are preferable in all cases. Individual bonds, however, will not be rejected.

51. In furnishing supplies required under this circular, the contractors shall not, directly or indirectly, employ any person undergoing sentence of imprisonment at hard labor which may have been imposed by a court of any State, Territory or municipality having criminal jurisdiction, nor permit such employment by any person furnishing labor or materials to contractors.

52. The contracts will provide that in case of failure of the contractors to comply with the stipulations of their contracts the Government may supply any deficiencies by purchase in open market or otherwise, and the said contractors shall be charged with all expenses resulting from such failure.

53. STRICT CONSTRUCTION OF TIME PERIODS IN CONTRACTS.—The Secretary of War has directed that the especial attention of all contractors, at the time of signing contracts, be called to the fact that it is the purpose of the War Department to exact a fulfillment of all contracts as to the time periods, and that they should understand when entering into contracts with this department that they need not do so with the expectation that they can be relieved from those conditions.

54. As soon as possible after bids are opened and examined, they will be submitted to the department commander, with recommendation that contracts be awarded to the lowest responsible bidders for the best and most suitable articles. Every effort will be made

31 to expedite action, so that successful bidders may be informed without unnecessary delay of the result of their proposals. To insure prompt awards, bidders are requested to exercise due care in the preparation of their proposals in order that they may be complete in every particular.

55. Attention is invited to notes printed upon the blank form of the proposal, which should be carefully considered.

56. Bidders or their representatives are invited to be present at the opening of the proposals.

57. Preference will be given to articles of domestic production and manufacture, conditions of quality and price (including in the price of foreign productions and manufacture the duty thereon) being equal, and such preference will be given to articles of American

production and manufacture produced on the Pacific coast to the extent of consumption required by the public service there.

H. L. ROGERS,
Colonel, Q. M. Corps,
Department Quartermaster.

Filed April 16, 1931, Court of Claims. A true copy. Test this March 11, 1932.

[SEAL.]

F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claims.

[Indorsement on cover:] Enter. Attorney General. File No. 36604. Court of Claims. Term No. 790. Thomas C. Edwards *vs.* The United States. Certificate. Filed March 11, 1932. File No. 36604.

U. S. GOVERNMENT PRINTING OFFICE: 1932

FILE COPY

MAR 14 19

No. 790

In the Supreme Court of the United States

OCTOBER TERM, 1931

THOMAS C. EDWARDS, PLAINTIFF

v.

THE UNITED STATES

ON CERTIFICATE FROM THE UNITED STATES COURT OF CLAIMS

JOINT MOTION TO ADVANCE

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 790

THOMAS C. EDWARDS, PLAINTIFF

v.

THE UNITED STATES

ON CERTIFICATE FROM THE UNITED STATES COURT OF CLAIMS

JOINT MOTION TO ADVANCE

Now comes the Solicitor General and moves the Court to advance the above-entitled cause for hearing at the earliest date convenient to the Court.

The case is before the Court on certificate from the United States Court of Claims filed March 11, 1932.

The question involved is whether a Special Act of Congress became a law when it was approved by the President on March 5, 1931, after the final adjournment of the Congress which had passed it.

The case presents an important question of constitutional law which has not been previously decided by any court. It is highly desirable that the

107608—32

executive branch of the Government secure an authoritative ruling upon this question so that the validity of the several Acts of the Seventy-First Congress approved by the President after March 4, 1931, may be determined. It is desirable that this question be determined before the end of the term so that the validity of laws enacted by Congress and approved by the President may be determined without delay.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

Counsel for the plaintiff joins in this motion.

M. WALTON HENDRY,
Attorney for Plaintiff.

MARCH, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932

FILE COPY

APR 5 1932

CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 790

THOMAS C. EDWARDS

vs.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

BRIEF FOR PLAINTIFF

M. WALTON HENDRY,
Attorney for Plaintiff.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

THOMAS C. EDWARDS, Plaintiff, vs. THE UNITED STATES, Defendant.		No. 790.

CERTIFICATE FROM THE COURT OF CLAIMS.

TABLE OF CONTENTS

	Page
Brief for Plaintiff	1

LIST OF CASES CITED

Opinion by Attorney General Mitchell, 36 Op. A. G. 403	2
The Orange Car & Steel Co. v. *The United States*, Court of Claims No. M-341, decided February 8, 1932	2
United States v. *Weil*, 29 Ct. Cls. 523, 527, 534, 538, 540, 547	2
Abandoned and Captured Property Act, March 12, 1863	3
Padelford v. *United States*, 9 Wall. 543	4
Klein v. *United States*, 13 Wall. 128	4
Pargoud v. *United States*, 13 Wall. 156	4
Sprott v. *United States*, 20 Wall. 468	4
Byrnes v. *United States*, 3 Ct. Cls. 195	4
Gaithers v. *United States*, 3 Ct. Cls. 191	4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

THOMAS C. EDWARDS, Plaintiff, vs. THE UNITED STATES, Defendant.	No. 790.

BRIEF FOR PLAINTIFF.

This case came on for hearing in the Court of Claims upon demurrer filed by the defendant to the petition. The only question raised on the demurrer was a constitutional question, and that is, whether the special congressional act involved in this case having been signed by the President on March 5, 1931, subsequent to the adjournment of Congress but within ten days, Sundays excepted, after it was presented to him, became a law.

In its brief on the demurrer in the Court of Claims the defendant cited an opinion by Attorney General Mitchell, dated March 4, 1931, to President Hoover (36 Op. A. G. 403), wherein the Attorney General rendered a decision on the identical point at issue in this case to the President just one day prior to the date that he signed and approved the special Act, the constitutionality of which is now in question, and in conformity with which decision the President signed and approved the special Act now in issue on March 5, 1931, just one day subsequent to the final adjournment of the Congress which passed it, and in its brief on

this case the defendant, referring to the opinion of the Attorney General, *supra,* stated:

> "Counsel for the Government are personally of the opinion that the conclusion reached by the Attorney General is correct, * * *."

The same point was raised on demurrer at the same time by the defendant in the Court of Claims in the case of *The Orange Car & Steel Co.* v. *The United States,* Court of Claims No. M–341. In this case a special Act was passed for relief of The Orange Car & Steel Co. by Congress and was signed and approved by the President on March 5, subsequent to the adjournment of the Congress which passed it, precisely as in the instant case and in this case likewise the defendant cited the opinion of the Attorney General, *supra,* and made the same statement with reference thereto. Under date of February 8, 1932, the Court of Claims rendered an opinion in The Orange Car & Steel Co. case, *supra,* and on page 4 of its opinion, referring to the opinion of the Attorney General, *supra,* stated:

> "The able and exhaustive opinion of the Attorney General, which is set out in the argument, leaves nothing further to be said on this question. Following this opinion, we hold that the act is constitutional."

Thereafter and notwithstanding this decision by the Court of Claims on the identical point at issue the Court of Claims certified to the Supreme Court of the United States on March 11, 1932, the identical question which it had previously decided in The Orange Car & Steel Co. case, *supra,* as aforesaid. Likewise, the Court of Claims has previously decided the same point at issue in the case of *United States* v. *Weil,* 29 Ct. Cls. 523, and in that case in a very exhaustive opinion decided that not only a bill signed by the President of the United States after an adjournment of Congress for a recess became a law, but went further and discussed and decided the point now at issue, namely, a

bill signed by the President after the final adjournment of Congress but within ten days, Sundays excepted, was a valid law. It is true that the discussion of this point was not necessary to the disposition of that case, but nevertheless the point involved was specifically decided by the Court of Claims. On page 527 of that case the Court of Claims stated:

> "After a prolonged and careful examination of the history of the Abandoned and Captured Property Act, 12th March, 1863 (12 Stat. L. P. 820), the Court is now constrained to say that * * * the authority of the President to approve a bill within the time prescribed by the Constitution, *but after the expiration of the Congress* which passed it must be regarded as now settled."

In the Court of Claims' discussion of the point at issue in the Weil case, *supra,* the history of the Abandoned and Captured Property Act which was approved by President Lincoln on March 12, 1863, eight days subsequent to the final adjournment of Congress, was thoroughly discussed and the various cases involving the constitutionality of this act which came before the United States Supreme Court were cited, and the Court of Claims held that since the constitutionality of this act had been before the United States Supreme Court in the cases in question, argued by the most learned counsel, and decided by the United States Supreme Court upholding the constitutionality of said act, that it must be held as settled that the Supreme Court, in upholding the said act in all of the said cases cited, particularly those where the constitutionality of the act was at issue as cited by the Court of Claims, had determined that an act signed and approved by the President within the ten-day period subsequent to the final adjournment of Congress, was a valid law.

The Court of Claims, in the Weil case, *supra,* page 534, further stated with reference to the decision of the Supreme

Court sustaining the validity of the said Abandoned and Captured Property Act:

> "Nothing can be plainer than that the Judges had before them two essential facts—that the bill was passed by the 37th Congress; that it was approved after the 37th Congress had expired; and nothing can be plainer than that with those facts before them they were then to determine whether the Court had jurisdiction of cases resting wholly upon the constitutionality of the act."

On page 538 of the Weil case, *supra,* the Court of Claims discusses the Constitution itself and such arguments as had been theretofore advanced against the constitutionality of an act approved by the President subsequent to the final adjournment of Congress and held that such adverse arguments were without valid grounds. And on page 540 of the said decision the Court of Claims stated:

> "The conclusion drawn from the text of the Constitution that the approval or disapproval of a bill by the President is not an exercise of the legislative power is rendered certain by referring to the history of the provisions."

Finally, on page 547, the Court of Claims stated, in the Weil case, *supra:*

> "But there is no provision which guards against the contingency of the President approving a bill after the adjournment of Congress. *None was intended and none was needed.*" (*Padelford* v. *United States,* 9 Wall. 543; *Klein* v. *United States,* 13 Wall. 128; *Pargoud* v. *United States,* 13 Wall. 156; *Sprott* v. *United States,* 20 Wall. 468; *Byrnes* v. *United States,* 3 Ct. Cls. 195; *Gaithers* v. *United States,* 3 Ct. Cls. 191.)

Since the defendant concedes that the opinion of the Attorney General (36 Op. A. G. 403) in conformity with which the present act was signed and approved by the President on March 5 is correct and the Court of Claims

has concurred in this opinion of the Attorney General in the case of The Orange Car & Steel Co., *supra*, and in the Weil case, *supra*, in a most exhaustive discussion of the identical point at issue after citing the numerous decisions of this court upholding the constitutionality of the Abandoned and Captured Property Act which was not approved by President Lincoln until March 12, 1863, eight days subsequent to the final adjournment of Congress, "that the authority of the President to approve a bill within the time prescribed by the Constitution, but after the expiration of the Congress which passed it must be regarded as now settled," it is submitted that the question submitted to this court should be answered in the affirmative.

Respectfully submitted,

M. WALTON HENDRY,
Attorney for Plaintiff.

FILE COPY

APR 7

No. 790

In the Supreme Court of the United States

OCTOBER TERM, 1931

THOMAS C. EDWARDS

v.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITE STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question certified	1
Constitutional provision involved	2
Statement	3
Summary of argument	4
Argument:	
I. Constitutional practice and historical precedents are not so definite as to be controlling	6
II. The constitutional provision, fairly construed, permits the President to approve bills after the final adjournment of Congress but within ten days, Sundays excepted, after they have been presented to him	14
Conclusion	24

CITATIONS

Cases:	
Arnold v. *McKellar*, 9 S. C. 335	21
Boyd v. *Deal*, 24 Fla. 293	21
Detroit v. *Chapin*, 108 Mich. 136	21
Fowler v. *Peirce*, 2 Cal. 165	17–18, 21
Hardee v. *Gibbs*, 50 Miss. 802	21
Hodges v. *United States*, 18 C. Cls. 700	9, 10
Johnson v. *Luers*, 129 Md. 523	21
Johnson City v. *Tenn. Eastern Electric Co.*, 133 Tenn. 632	21
La Abra Silver Mining Co. v. *United States*, 175 U. S. 423	4, 7, 9, 12, 16, 17, 19–21
Lankford v. *County Commissioners*, 73 Md. 105	21
Opinion of the Justices, 45 N. H. 607	21
Opinion of the Justices, 3 Mass. 567	21
Opinion of the Justices, 23 Fla. 297	21
Orange Car & Steel Co. v. *United States* (C. Cls.), decided February 8, 1932	1
People v. *Bowen*, 21 N. Y. 517	21
Pocket Veto Case, 279 U. S. 655	16
Seven Hickory v. *Ellery*, 103 U. S. 423	6, 22–24
Solomon v. *Commissioners*, 41 Ga. 157	21
State v. *County of Coahoma*, 64 Miss. 358	21
State v. *Fagan*, 22 La. Ann. 545	21
Trustees of School District No. 1 v. *County Commissioners of Ormsby County*, 1 Nev. 334	21
United States v. *Weil*, 29 C. Cls. 523	9, 12, 17, 18
Wheeler Lumber Co. v. *United States*, 281 U. S. 572	1

	Page
Constitution:	
Article I, Section 7	2
Statutes:	
Act of March 12, 1863, c. 120, 12 Stat. 820	8–9
Act of July 2, 1864, c. 225, 13 Stat. 375	9
Judicial Code, Sec. 156 (U. S. C., Title 28, Sec. 262)	3
Act of March 5, 1931, c. 595, 46 Stat. 2163	3
Miscellaneous:	
Barnett, *The Executive Control of the Legislature* (1907), 41 Am. L. Rev. 215	21
Cong. Rec., Vol. 74, pp. 7250–7251	3
H. R. 8953	3
House Report No. 108, 38th Cong., 1st Sess	4, 8
37 L. R. A. 391	21
Memoirs of John Quincy Adams, Vol. 6, pp. 379–381	8
Nation, March 10, 1887, p. 197	12
20 Op. A. G. 503	12
32 Op. A. G. 225	13, 14
36 Op. A. G. 403	13
Renick, *The Power of the President to Sign Bills after the Adjournment of Congress* (1898), 32 American Law Review, 208	14
Rogers, *The Power of the President to Sign Bills after Congress has Adjourned* (1920), 30 Yale Law Journal, 1	13, 14, 17

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 790

THOMAS C. EDWARDS

v.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The Court of Claims has rendered no opinion in this case.

JURISDICTION

The certificate of the Court of Claims was filed in this Court on March 11, 1932. On the same day the Court of Claims withdrew its decision in *Orange Car & Steel Co.* v. *United States,* referred to on p. 2 of the plaintiff's brief. The question certified also arose in that case which is now pending and undecided in the Court of Claims. The jurisdiction of this Court rests on Section 3 (a) of the Act of February 13, 1925. See *Wheeler Lumber Co.* v. *United States,* 281 U. S. 572.

QUESTION CERTIFIED

The question certified is as follows:

Did the Act of March 5, 1931 (46 Stat. 2163), become a law when it was approved by the President

on March 5, 1931, after the final adjournment on March 4, 1931, of the Congress which had passed it?

More broadly stated, the question is whether the President may approve a bill after the final adjournment of the Congress which has passed it but within ten days of the time it is presented to him.

CONSTITUTIONAL PROVISION INVOLVED

The pertinent provisions of Section 7, Article I, of the Constitution are as follows:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. * * * If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

STATEMENT

Thomas C. Edwards brought suit against the United States in the Court of Claims. The United States contended that the suit was on a contract and that the cause of action had been barred by the statute of limitations (Sec. 156 of the Judicial Code; U. S. C., Title 28, Sec. 262), unless jurisdiction was conferred on the Court of Claims by the Act of March 5, 1931, c. 595, 46 Stat. 2163, which was passed by both Houses of Congress during the Third Session of the 71st Congress, presented to the President March 3 (Cong. Rec., vol. 74, pp. 7250–7251; H. R. 8953), and signed by the President on March 5, 1931, after the final adjournment of the Congress. The certificate states that the President signed it within ten days, Sundays excepted, after it was presented to him. (R. 1.)

As the President acted upon an opinion of the Attorney General (36 Op. A. G. 403), holding that he had power to approve the bill after adjournment of Congress but within ten days after it was presented to him, the officials of the Department of Justice are committed to the view that the bill became a law and are therefore unable to support the claim that the suit was barred by the statute of limitations. But because of the great importance of the question and the need for having it settled by this Court we felt obliged to raise it in the Court of Claims.

The Judiciary Committee of the House of Representatives concluded in 1864 (House Report No. 108, 38th Congress, First Session, June 11, 1864) that the President had no power to approve a bill after the adjournment of the Congress which passed it. We reported the pendency of this cause to the present Chairman of the Judiciary Committee of the House with the suggestion that some one in the House might be designated to appear *amicus curiæ* and present arguments in support of the report which the former Judiciary Committee made.

SUMMARY OF ARGUMENT

The question whether the President may approve a bill while Congress is not in session has arisen in three different situations: First, where the approval was given while Congress was taking a short recess; second, where approval was given after Congress had adjourned *sine die* at the end of a session; and third, where a bill was approved after Congress had finally adjourned at the expiration of the time for which Representatives were elected.

That the President may sign a bill during a short recess of the Congress was settled in *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423, but the question arising at the end of a session was expressly reserved, and no mention was made of the situation arising when a Congress ends.

There has been no long-continued practical construction of the Constitution which can be accepted

as controlling. President Lincoln signed one bill after the final adjournment of the Congress which passed it, but subsequent legislation prevented a definite adjudication of the question. President Wilson approved a group of bills after the adjournment of a session in reliance on an opinion by Attorney General Palmer. (32 Op. A. G. 225.) President Hoover in March, 1931, in reliance on an opinion of the Attorney General (36 Op. A. G. 403) approved eighteen bills including the one here involved, after the expiration of the 71st Congress. The question has been frequently debated, but the general practice of Presidents to sign bills during sessions of Congress has been induced by a purpose to avoid rather than to decide the question. The state of the precedents is such that the question is an open one to be resolved by a consideration of the constitutional provision.

Congress has no function to perform in respect of bills which have been approved, so there is no good reason why the President should not approve bills after adjournment. Public interest requires that he be given the full ten days contemplated by the Constitution to consider measures passed by Congress. In directing that every bill shall be presented to the President the Constitution provides "if he shall approve, he shall sign it." It does not expressly state when he shall sign it nor that he shall sign it while Congress is in session. The argument that if he may approve a bill after the ad-

journment of Congress he has an indefinite time to act, finds no support in the Constitution. That he must sign within ten days is necessarily implied, for, if he does not and Congress shall have adjourned it is provided that the bill shall fail to become a law.

The argument that the President is a part of the legislative branch when acting on legislation and that his functions terminate when Congress finally adjourns is merely a political theory without any support in the words of the Constitution. Because of the large number of bills presented to Presidents at the end of sessions of Congress in modern times, public interest will be served by holding that he may approve bills after adjournment.

The reasoning of the Court in *Seven Hickory* v. *Ellery*, 103 U. S. 423, supports these conclusions.

ARGUMENT

I

CONSTITUTIONAL PRACTICE AND HISTORICAL PRECEDENTS ARE NOT SO DEFINITE AS TO BE CONTROLLING

The question whether the President may approve a bill while Congress is not in session has arisen in three situations: First, where approval was given while Congress was in recess; second, where approval was given after Congress had adjourned *sine die* at the end of a session; and third, where approval was given after Congress had finally adjourned at the expiration of the time for

which members of the House of Representatives were elected.

In *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423, it appeared that on December 20, 1892, a bill passed by Congress had been presented to the President and that on December 22, by joint action, the two Houses had taken a recess until January 4, 1893. On December 28, 1892, while the Congress was not actually sitting, the President approved the Act in question. The Court said (p. 455):

> Whether the President can sign a bill after the final adjournment of Congress for the session, is a question not arising in this case, and has not been considered or decided by us. We adjudge—and touching this branch of the case adjudge nothing more—that the act of 1892 having been presented to the President while Congress was sitting and having been signed by him when Congress was in recess for a specified time, but within ten days, Sundays excepted, after it was so presented to him, was effectively approved, and immediately became a law, unless its provisions are repugnant to the Constitution.

The question now arising was not mentioned.

The proceedings in the Constitutional Convention throw no light on the problem.

With the exceptions hereafter noted, it seems to have been traditional with the Presidents to sign bills before adjournment. In 1824 the point was

raised in the Cabinet of President Monroe. Secretary of State Adams thought the President could sign a bill after adjournment. Attorney General Wirt at first agreed but (apparently) changed his mind. Mr. Calhoun thought the bill could not be signed but only because "uniform practice had established a practical construction." The President decided not to sign. (See Memoirs of John Quincy Adams, Vol. 6, pp. 379–381.) Nothing further developed until Congress on March 3, 1863, passed a statute known as the Abandoned and Captured Property Act (Act of March 12, 1863, c. 120, 12 Stat. 820). Congress adjourned *sine die* on March 4, 1863, it being the expiration of the Congress and not merely the end of a session. President Lincoln approved the bill March 12, 1863. By resolution of May 16, 1864, the House of Representatives ordered its Judiciary Committee to report by what warrant the Act was approved and whether it was in force. The Committee unanimously concluded that the Act was not in force. House Report No. 108, 38th Congress, First Session.

The Committee said:

> The ten days' limitation contained in the section above quoted refers to the time during which Congress remains in session, and has no application after adjournment. Hence if the Executive can hold a bill ten days after adjournment, and then approve it, he can as well hold it ten months before approval. This would render the laws of the

> country too uncertain, and could not have been intended by the framers of the Constitution.
>
> The spirit of the Constitution evidently requires the performance of every act necessary to the enactment and approval of laws to be perfect before the adjournment of Congress.

The House took no direct action on the report, but it passed the Act of July 2, 1864, c. 225, 13 Stat. 375, which referred to and amended "the Act approved March 12, 1863."

In *Hodges* v. *United States,* 18 C. Cls. 700, arising under the Abandoned and Captured Property Act, the court discussed the question of its validity, stated that the legislative, executive, and judicial departments tacitly and without question had acquiesced in the validity of the statute, but mentioned the fact that the uniform practice had been from the first organization of the Government for the President not to approve bills after the adjournment of Congress with the single exception of the Abandoned and Captured Property Act. The Court of Claims then expressed no opinion on the question, stating that it was no longer of any practical importance, since all litigation under the provisions of that Act had been completed. In *United States* v. *Weil,* 29 C. Cls. 523, the court had under consideration a bill signed by the President during a short recess of the Congress, presenting the same question decided by this Court in *La Abra Silver*

Mining Co. v. *United States,* 175 U. S. 423, *supra.* The full history of the Abandoned and Captured Property Act of March 12, 1863, is recited in the opinion of the Court of Claims. It is evident that there was ground for the conclusion that subsequent legislation by Congress amounted to an implied re-enactment of the Abandoned and Captured Property Act, thus eliminating any question as to its validity. The opinion of the Court of Claims discussed the question and concluded that the Constitution does not require that a bill be approved by the President while Congress is in session. Chief Justice Richardson, concurring in the view that the approval of the Act during a recess of the Congress was effective, said (pp. 848–849):

> I am not prepared to go further and to express an opinion upon the question not involved in the case whether or not the President has the right to approve a bill after the Congress in which it was passed has expired.
>
> I am impressed with the view which has prevailed and which, with the single exception of the captured and abandoned property act of March 12, 1863, has been adopted and followed in practice ever since the foundation of the Government, that the President for the time being is part of the legislative power of each separate Congress, like the Senate, which is a continuing body, and that when a Congress expires by limitation his authority to approve bills of that Congress is gone.

> If it were otherwise, an incoming President might approve bills of Congress belonging to the official term of his predecessor, with the merits of which he is not expected to be familiar, and for the consideration of which he would not have the ten days secured by the Constitution unless it should be held that bills may be presented to the President for approval after the Congress expires, which I apprehend would not be seriously urged by anybody.

In 1867 President Johnson refused to sign a bill during a recess of Congress between March 30 and July 3, 1867, but filed it in the State Department with the following endorsement:

> It is not believed that the approval of any bill after the adjournment of Congress, whether presented before or after such adjournment, is authorized by the Constitution of the United States, that instrument expressly declaring that no bill shall become law the return of which may have been prevented by the adjournment of Congress. To concede that, under the Constitution, the President, after the adjournment of Congress, may, without limitation in respect to time, exercise the power of approval and thus determine at his discretion whether or not bills shall become laws, might subject the legislative and executive departments of the Government to influences most pernicious to correct legislation and sound public morals, and, with a single exception, occurring during the prevalence of civil war, would be contrary to the established prac-

> tice of the Government from its inauguration to the present time. The bill will therefore be filed in the office of the Secretary of State without my approval.

In March, 1887, Congress passed a River and Harbor bill shortly before adjournment, and Mr. Willis, Chairman of the House Committee, presented to President Cleveland a brief supporting the power to approve a bill after adjournment. (See Nation, March 10, 1887, p. 197.) It has been suggested that Attorney General Garland advised the President he did not have the power for the reason that he was a part of Congress in this respect and could not act after the Congress had ceased to exist. There is no record in the Department of Justice of any opinion by Attorney General Garland on the subject. The President did not sign the bill.

There next arose, in December, 1892, the question as to the power of a President to approve bills during the recess of Congress from December 22, 1892, to January 4, 1893, and in reliance on an opinion by Attorney General Miller (20 Op. A. G. 503) President Harrison signed a group of bills during the recess, an action which was subsequently approved by the Court of Claims in *United States* v. *Weil, supra,* and by this Court in *La Abra Silver Mining Co.* v. *United States, supra.*

The question does not seem to have arisen again until 1920, when Attorney General Palmer advised President Wilson that he had power to approve

bills after adjournment *sine die* of the session of Congress at which the bills were passed but within ten days (Sundays excepted) after they had been presented to him. (32 Op. A. G. 225.) In reliance on that opinion, President Wilson signed eight bills after the adjournment of Congress, the most important of which was the Act creating the Federal Power Commission. (Rogers, *The Power of the President to Sign Bills after Congress has Adjourned,* 30 Yale Law Journal 1, at p. 2, note 3.) The validity of these measures has never been questioned on the ground that they were not properly approved. The opinion of the Attorney General, dated June 19, 1920, is a very clear and able document, and while dealing with the adjournment of a session and not the expiration of a Congress, its reasoning is applicable here. Except for the group of bills signed by President Wilson after the adjournment *sine die* of a session of the 66th Congress, the Presidents appear to have continued the practice of signing bills before adjournment until President Hoover in March, 1931, signed a number of bills after the expiration of the 71st Congress but within ten days after they were presented to him, this action being taken in reliance on an opinion of the Attorney General (36 Op. A. G. 403) which adopted the reasoning of the opinion of Attorney General Palmer but went further and held that there was no distinction between the adjournment of a session and the final adjournment or expiration of a Congress.

Further discussion of the precedents will be found in the able article in the Yale Law Journal by Professor Lindsay Rogers, above referred to, in the opinion of the Attorney General of June 19, 1920 (32 Op. A. G. 225), and in 32 American Law Review 208. There have been expressions of opinions in Congress and by Presidents to the effect that a measure could only be approved while Congress was in session, and, with the exceptions noted, it has been the traditional practice for Presidents to approve measures before adjournment.

It is obvious that there has been no controlling practical exposition of the Constitution. The practice of approving bills before adjournment is a construction of a negative character and not an affirmative assertion that approval must be given, if at all, before adjournment, and the practice seems to have been followed out of abundant caution to avoid rather than decide the question. It is only in recent years that the volume of legislation presented to the President for consideration at the end of a session has been so large as to make the question a live one.

II

THE CONSTITUTIONAL PROVISION, FAIRLY CONSTRUED, PERMITS THE PRESIDENT TO APPROVE BILLS AFTER THE FINAL ADJOURNMENT OF CONGRESS BUT WITHIN TEN DAYS, SUNDAYS EXCEPTED, AFTER THEY HAVE BEEN PRESENTED TO HIM

The pertinent provisions of Section 7 of Article I of the Constitution (*supra* p. 2) deal with three contingencies: First, approval of a bill by signing

it; second, disapproval of a bill by return of it with objections; and third, failure either to approve by signing it, or disapprove by returning it within ten days after it is presented to the President, in which case (a) if Congress has not adjourned the bill becomes a law, (b) if Congress has adjourned the bill does not become a law.

It is provided that every bill which shall be passed, before it becomes a law, shall be presented to the President and "if he approve he shall sign it." So far, there is no time limit on its approval. There is no express provision that the President must sign while Congress is in session. The other provisions of this section deal with the matter of return of measures which the President does not approve. The two principal arguments against the power of the President to approve measures after final adjournment of the Congress which passed them are those advanced by the Judiciary Committee of the House in 1863, that if the President can approve a bill after adjournment there is no limit on the time within which he may act which would render the laws of the country too uncertain and that the President is a constituent part of the legislative branch when approving bills and that when the Congress expires his functions end.

The first objection is not supported by the provisions of Section 7 of Article I. If the President desires to approve a bill after adjournment, he must approve it within ten days after it is pre-

sented to him in order to prevent the operation of that clause which says "if any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law." Under this provision, if the ten days are allowed to expire without approval and meanwhile the Congress has adjourned, the bill shall not be a law, it dies, and that is the end of the matter; and where these conditions occur it may not fairly be said that the President by action after the ten days can resuscitate the measure by giving it his approval. The purpose of the Constitution is to allow the President ten days after a bill is presented to him to consider whether he shall approve or disapprove (*The Pocket Veto Case,* 279 U. S. 655, 677), and that limitation in time remains in effect although Congress may have adjourned. In *La Abra Silver Mining Co.* v. *United States, supra,* at page 454, the Court said:

> The Constitution is silent as to the time of his signing, except that his approval of a bill duly presented to him—if the bill is to become a law merely by virtue of such approval—must be manifested by his signature within ten days, Sundays excepted, after the bill has been presented to him.

The Constitution declares that in the event of an adjournment a bill shall not become a law if the

President does not sign it. It does not declare that a bill shall not become a law although he does sign it. The contingency provided for is the nonapproval of an act after the adjournment of Congress with a consequent inability to return it to the House in which it originated. It declares what shall happen in case of nonapproval. It does not declare that the same thing shall happen in case of approval. *United States* v. *Weil*, 29 C. Cls. 523, 538.

The other argument against the power to approve bills after adjournment is equally unsound. The contention that the President is a part of the Congress and that he can not function when Congress is not in session is not supported by any words of the Constitution. It is an assertion that the President is a part of each separate Congress and if it is in existence, though not in session, he may approve bills. It is nothing but a political theory and was rejected in part by this Court in *La Abra Silver Mining Co.* v. *United States, supra,* which sustained the presidential approval of a measure during a recess. This theory has been discussed in *United States* v. *Weil, supra,* page 538, in the Yale Law Journal, Volume 30, p. 1, and in many of the State decisions hereafter referred to. In *Fowler* v. *Peirce,* 2 Cal. 165, the court stated it as follows:

> This power is *a unit,* though distributed; and the parts can only act in unison. Whenever a part ceases to act, the whole becomes inoperative. The executive act owes its

> validity to the existence of the legislative body. Upon the adjournment of that body, the power ceases, and all acts of a legislative nature are void.

The trouble with this theory is that there is nothing in the Constitution to support it. The House Judiciary Committee in 1864 relied on the "spirit" of the Constitution to sustain it.

Mention has been made of the situation arising when the Congress expires at the time the President's term ends. With reference to this, when expressing the opinion that the President can not approve a bill after the Congress which passed it has expired, Chief Justice Richardson, of the Court of Claims, said (29 C. Cls. 549):

> If it were otherwise, an incoming President might approve bills of a Congress belonging to the official term of his predecessor, with the merits of which he is not expected to be familiar, and for the consideration of which he would not have the ten days secured by the Constitution unless it should be held that bills may be presented to the President for approval after the Congress expires, which I apprehend would not be seriously urged by anybody.

Such a situation can not arise. The necessary implication from the words of the Constitution is that a bill must be "presented" to the President by the Congress which passed it. After that Congress has expired there is no authority left to present it. The Congress which has expired is not in

existence to present its bills to the incoming President, and the latter can not act on bills not "presented" to him.

No practical reason has ever been given to support the contention that the President should not be permitted to approve measures after Congress adjourns. Congress has no function to perform in respect of measures approved by the President. While it has been the traditional practice for the President to advise the Congress that he has approved bills, there is no action to be taken by Congress after such approval.

Public interest would suffer by the requirement that the President must act before adjournment. During the period from February 28, 1931, to noon of March 4, 1931, 269 bills were presented to the President by Congress for his consideration, 184 of which, many of great importance, were presented to him during the last twenty-four hours of the session. It is impossible for a President to give adequate consideration to such a large number of measures in so short a time before adjournment.

There is no real distinction to be drawn between the case dealt with in *La Abra Silver Mining Co.* v. *United States, supra,* involving a short recess, the case considered in Attorney General Palmer's opinion in 1920, where the session had ended but the Congress had not expired, and the case at bar, where the measure was approved after the final adjournment of the Congress. In the *La Abra* case this Court said (pp. 454–455):

We perceive nothing in these constitutional provisions making the *approval* of a bill by the President a nullity if such approval occurs while the two Houses of Congress are in recess for a named time. After a bill has been presented to the President, no further action is required by Congress in respect of that bill unless it be disapproved by him and within the time prescribed by the Constitution be returned for reconsideration. It has properly been the practice of the President to inform Congress by message of his approval of bills, so that the fact may be recorded. But the essential thing to be done in order that a bill may become a law by the approval of the President is that it be signed within the prescribed time after being presented to him. That being done, and as soon as done, whether Congress is informed or not by message from the President of the fact of his approval of it, the bill becomes a law, and is delivered to the Secretary of State as required by law.

Much of the argument of counsel seems to rest upon the provision in relation to the final adjournment of Congress for the session, whereby the President is prevented from returning, within the period prescribed by the Constitution, a bill that he disapproves and is unwilling to sign. But the Constitution places the approval and disapproval of bills, as to their becoming laws, upon a different basis. If the President does not approve a bill, he is required within a named time to send it back for consideration. But if by its action, after the presen-

> tation of a bill to the President during the time given him by the Constitution for an examination of its provisions and for approving it by his signature, Congress puts it out of his power to return it, not approved, within that time to the House in which it originated, then the bill falls, and does not become a law.

The State decisions are conflicting and arise under varying provisions of State constitutions. The New York Court of Appeals in *People* v. *Bowen,* 21 N. Y. 517, held that in the provision of the constitution of the State of New York (from which the provision of the Federal Constitution was taken) there was nothing forbidding the approval of a bill by the Governor after the session of the legislature was terminated by adjournment.

Discussion of other State cases will be found in Barnett, *The Executive Control of the Legislature,* 41 Am. L. Rev. 215, and in a note in 37 L. R. A. 391. See also *Fowler* v. *Peirce,* 2 Cal. 165; *Opinion of the Justices,* 23 Fla. 297; *Boyd* v. *Deal,* 24 Fla. 293; *Solomon* v. *Commissioners,* 41 Ga. 157; *State* v. *Fagan,* 22 La. Ann. 545; *Lankford* v. *County Commissioners,* 73 Md. 105; *Johnson* v. *Luers,* 129 Md. 523; *Opinion of the Justices,* 3 Mass. 567; *Detroit* v. *Chapin,* 108 Mich. 136; *State* v. *County of Coahoma,* 64 Miss. 358, overruling *Hardee* v. *Gibbs,* 50 Miss. 802; *Trustees of School District No. 1* v. *County Commissioners of Ormsby County,* 1 Nev. 334; *Opinion of the Justices,* 45 N. H. 607; *Arnold* v. *McKellar,* 9 S. C. 335; *Johnson City* v. *Tennessee Eastern Electric Co.,* 133 Tenn. 632.

In *Seven Hickory* v. *Ellery*, 103 U. S. 423, a case arising in the Circuit Court of the United States for the Southern District of Illinois, this Court construed a provision of the constitution of Illinois, which in all material respects was substantially the same as the provision in the Federal Constitution excepting that the last clause read as follows:

> If any bill shall not be returned by the governor within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the General Assembly shall, by their adjournment, prevent its return; in which case, *the said bill shall be re-returned on the first day of the meeting of the General Assembly after the expiration of said ten days, or be a law.* (Italics ours.)

This Court said (pp. 424–425):

> The single question we have now to consider is whether a bill passed by both Houses, and presented to the governor before the legislature adjourns, becomes a law when signed by the governor after the session of the legislature has been terminated by an adjournment, but within ten days from its presentation to him. We have no hesitation in saying it does. There is certainly no express provision of the Constitution to the contrary. All that instrument requires is that, before any bill, which has passed the two Houses, can become a law, it shall be presented to the governor. If he approves it, he may sign it. If he does sign it within

the time, the bill becomes a law. That is not said in so many words, but is manifestly implied. After a bill has been signed, the legislature has nothing more to do with it. Undoubtedly, if the legislature should be in session when the signing is done, it would not be inappropriate for the governor to communicate his approval to one or both the Houses; but there is nothing in the Constitution which requires him to do so. The filing of the bill by the governor in the office of the secretary of state with his signature of approval on it is just as effectual in giving it validity as a law, as its formal return to the legislature would be. The bill becomes a law when signed. Everything done after that is with a view to preserving the evidence of its passage and approval.

The Court further said (pp. 425–426):

So that, under the Constitution of Illinois, if a bill is passed by both Houses of the legislature it becomes a law—1, when approved and signed by the governor within ten days after its presentation to him; 2, when the legislature being in session, the governor fails to sign the bill or return it with his objections to the House in which it originated within the ten days; 3, when, after being returned within the ten days, it is passed by the requisite majorities over his objections; 4, when, if the session of the legislature terminates by an adjournment before the expiration of the ten days, he fails to return the bill with his objections the first day of the

next session; and, 5, when, having returned it with objections on the first day of the next session, it is again passed by the requisite majorities in both Houses. And it becomes a law at the time when the event happens which is to give it validity. In the present case the bill was approved and signed within the ten days, and, therefore, as we think, it became a law from the date of the approval, notwithstanding the legislature was not in session at the time. This is in accordance with the ruling of the Court of Appeals of New York in *The People* v. *Bowen* (21 N. Y. 517); of the Supreme Court of Louisiana in *State, ex rel. Belden, Attorney-General,* v. *Fagan* (22 La. Ann. 545), and of the Supreme Court of Georgia in *Solomon* v. *Commissioners of Cartersville* (41 Ga. 157), upon provisions somewhat similar in the constitutions of those States.

Such differences as are found between the provisions of the Federal Constitution and those of the Illinois constitution have no direct bearing here. The adjournment of the Illinois legislature referred to in the *Seven Hickory* case was not the expiration of the legislature but the end of the regular session. Special sessions of the same legislature were held later in the same year.

CONCLUSION

The conclusion should be that there is nothing in the Constitution to sustain the view that approval must be given prior to final adjournment of the

Congress, and the question certified should be answered in the affirmative.

Respectfully submitted.

WILLIAM D. MITCHELL,
Attorney General.
THOMAS D. THACHER,
Solicitor General.
CHARLES B. RUGG,
Assistant Attorney General.
ERWIN N. GRISWOLD,
Attorney.

APRIL, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932

SUPREME COURT OF THE UNITED STATES.

No. 790.—October Term, 1931.

Thomas C. Edwards,
vs.
The United States.

On Certificate from the Court of Claims.

[May 31, 1932.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Private Bill No. 510 of the 71st Congress (c. 595, 46 Stat. 2163) provided that the Court of Claims should have jurisdiction to adjudicate a certain claim of the plaintiff against the Government. The court states that the bill was approved by the President on March 5, 1931, that is, within ten days (Sundays excepted) after it was presented to him, but after the final adjournment of the Congress which passed it. The following question is certified:

"Did the Act of March 5, 1931 (46 Stat. 2163), become law when it was approved by the President on March 5, 1931, after the final adjournment on March 4, 1931, of the Congress which had passed it?"

No difference of opinion between the parties as to the validity of the measure, as thus approved, is disclosed in the argument at bar. The President approved the bill upon the advice of the Attorney General (36 Op. A. G. 403) who, in accord with the plaintiff, submits that the certified question should be answered in the affirmative. In view of the opinion at one time expressed by the Judiciary Committee of the House of Representatives (H. R. Report No. 108, 38th Cong., 1st sess., June 11, 1864), the Attorney General advised the Judiciary Committee of that House of the pendency of the present cause, and we granted to Mr. Sumners, the Chairman of that Committee, at his request, leave to appear as *amicus curiae*. He has stated to the Court that the Judiciary Committee of the House of Representatives is now of the opinion that the President has the power asserted and he has presented

an argument in support of the President's action. While no contention to the contrary has been urged upon us in the instant case, our attention has been directed to opposing views strongly held in the past, and these—no less than those now advanced—we have carefully considered in reaching our conclusion.

The question arises under the second paragraph of Section 7 of Article I of the Constitution, which reads as follows:

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall be come a Law. . . . If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law".

The last sentence of this provision clearly indicates two definite and controlling purposes: *First.* To insure promptness and to safeguard the opportunity of the Congress for reconsideration of bills which the President disapproves; hence, the fixing of a time limit so that the status of measures shall not be held indefinitely in abeyance through inaction on the part of the President. *Second.* To safeguard the opportunity of the President to consider all bills presented to him, so that it may not be destroyed by the adjournment of the Congress during the time allowed to the President for that purpose. As this Court said in *The Pocket Veto Case*, 279 U. S. 655, 677, 678: "The power thus conferred upon the President cannot be narrowed or cut down by Congress, nor the time within which it is to be exercised, lessened, directly or indirectly." The constitutional provision is explicit as to the consequences in case the bill is not signed by the President within the time fixed. The bill then becomes a law, unless the Congress by adjournment has prevented the return of the bill, and, in the latter event, it is not to be a law. But the provision is not explicit as to the con-

sequence in case the bill is approved by the President within the time fixed and in the meantime the Congress has adjourned.

The proceedings and debates of the Constitutional Convention throw no light upon this question. See *The Pocket Veto Case, supra*, at p. 675. Nor has the provision received a practical construction so positive and consistent as to be determinative. The general practice of Presidents, in being present at the Capitol for the purpose of signing bills during the closing hours of the sessions of the Congress, has indicated the existence of doubt and the desire to avoid controversy.[1] It appears that the question was raised during the administration of President Monroe, and, in view of a difference of opinion among his advisers, the bill in question was not signed.[2] President Lincoln, on March 12, 1863, approved a bill after the Congress had adjourned *sine die* on March 4, 1863, the bill having been passed on March 3, 1863 (c. 120, 12 Stat. 820). This action was not left unchallenged. The Judiciary Committee of the House of Representatives made a unanimous report, in re-

[1]See Memoirs of John Quincy Adams (1875), vol. 7, pp. 233, 234.

[2]John Quincy Adams gives the following account of this incident:

"Another question discussed was, whether the President could now sign the Act concerning the Florida wreckers, which was examined and actually announced to the House as having been signed, but accidentally, among forty or fifty other Acts approved the last evening before the close of the session, remained without his signature. Could the President sign an Act, Congress not being in session? Wirt thought he could. So did I. The article of the Constitution concerning the signature of the President to Acts of Congress was read and analyzed. Nothing in it requiring that the President should sign while Congress are in session.

"Calhoun said that uniform practice had established a practical construction of the Constitution.

"I observed that the practice had merely grown out of the precedents in the British Parliament. But the principles were different. The King was a constituent part of Parliament, and no Act of Parliament could be valid without the King's approbation. But the President is not a constituent part of Congress, and an Act of Congress may be valid as law without his signature or assent.

"Calhoun still thought that the uniform practice made the law. . . . And as the Act was to commence its operation only in October, and was not of an urgent character, it was concluded to be the safest course to leave the Act unsigned, and state the facts to Congress at their next session". Memoirs of John Quincy Adams (1875), vol. 6, pp. 379, 380.

sponse to a resolution of the House, that the Act was not in force.[3] It does not appear that the House acted upon this report. But the Congress soon after passed an Act which referred to the Act of March 12, 1863, as having been approved, and added to its provisions. Act of July 2, 1864, c. 225, 13 Stat. 375.[4] The Act of March 12, 1863, was the subject of several decisions of this Court, and in these no question appears to have been raised as to its validity in view of the time of its approval by the President.[5] President Johnson refused to sign a bill which he received on April 1,

[3]The Committee said that the act had been approved by the President "under the belief that the last clause of the section of the Constitution, above quoted, was designed more especially to prevent Congress from enacting laws without the approval of the Executive, which might be done by the passage of bills by the two houses, followed by an adjournment, before the President could examine and return them, were it not for the declaration that in such cases the bills shall not be laws; and did not relate to cases wherein the Executive should approve bills sent to him by Congress within ten days, even though an adjournment should occur before the return of the bills.

"That there is force and plausibility in this position, a little reflection will discover to any mind; but the committee cannot receive it as a correct interpretation of the Constitution.

"The ten days' limitation contained in the section above quoted refers to the time during which Congress remains in session, and has no application after adjournment. Hence if the Executive can hold a bill ten days after adjournment, and then approve it, he can as well hold it ten months before approval. This would render the laws of the country too uncertain, and could not have been intended by the framers of the Constitution.

"The spirit of the Constitution evidently requires the performance of every act necessary to the enactment and approval of laws to be perfect before the adjournment of Congress.

"The committee, therefore, conclude that the act referred to, approved March 12, 1863, is not in force; and in this conclusion the committee are unanimous." H. R. Report No. 108, 38th Cong., 1st Sess., June 11, 1864.

[4]Other references to the Act of March 12, 1863, as approved, are found in the Act of July 28, 1866, c. 298, sec. 8, 14 Stat. 329; Act of July 27, 1868, c. 276, sec. 3, 15 Stat. 243.

[5]Mrs. Alexander's Cotton, 2 Wall. 404, 420, 423; United States v. Anderson, 9 Wall. 56, 64; *Ex parte* Zelinger, 9 Wall. 244, 245 (19 Lawyers' Edition, 665, 666); United States v. Padelford, 9 Wall. 531, 540; United States v. Klein, 13 Wall. 128; Carroll v. United States, *id.*, 151; Armstrong v. United States, *id.*, 154; Pargoud v. United States, *id.*, 156. See Hodges v. United States, 18 Ct. Cls. 700; United States v. Weil, 29 Ct. Cls. 523.

1867, as the Congress had taken a recess from March 30, 1867, to July 3, 1867.[6]

It appears that President Cleveland was urged to approve a bill after the adjournment of the Congress, but he did not do so.[7] President Harrison, acting on the advice of Attorney General Miller (20 Op. A. G. 503), signed a number of bills during a recess of the Congress. Upon the opinion of Attorney General Palmer that the action was constitutional (32 Op. A. G. 225), President Wilson signed several bills after the adjournment *sine die* of the second session of the 66th Congress.[8] This precedent was followed in the instant case by President Hoover, relying upon the opinion of Attorney General Mitchell that there was no ground for a distinction as to the President's power in this respect between the case of adjournment at the close of a session and the final adjournment of the Congress.

The authority of the President to approve bills during a recess of the Congress, but within the time fixed by the Constitution, has been sustained by this Court. *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423. It appeared in that case that on December 22, 1892, two days after presentation of the bill to the President, the Congress had taken a recess until January 4, 1893. The bill was signed by the President on December 28, 1892. The Court expressly reserved the question, as one not before the court, whether the President could approve a bill "after the final adjournment of Congress for the session". But the reasoning of the opinion applies with as much force to the case of an adjournment, whether it is at the close of a session or is the final adjournment of the Congress, as to the case of a recess for a specified period.

---

[6]President Johnson filed the bill in the State Department with an endorsement, stating his belief that approval in these circumstances was not authorized by the Constitution. 4 Hinds' Precedents, sec. 3493. A resolution directing the re-enrollment of the bill was passed by the House of Representatives but not by the Senate. *Id.*

[7]The statement has been made that Attorney General Garland advised President Cleveland that he was without authority to sign bills after Congress had adjourned (see 32 American Law Review, p. 212), but we are informed that there is no record in the Department of Justice of any opinion by Attorney General Garland upon the subject. See 36 Op. A. G. at p. 404.

[8]The session adjourned *sine die* on June 5, 1920, 41 Stat. 363, 1639. The following bills were subsequently approved by the President: Act of June 10, 1920, c. 285, 41 Stat. 1063; Acts of June 14, 1920, c. 286, 287, 288, 289, 290 and 291; *id.*, 1077-1079. See 30 Yale Law Journal, 1.

The Court effectively answered the opposing contention based upon the legislative character of the President's function in approving or disapproving bills. See *Smiley* v. *Holm,* 285 U. S. —. The fact that it is a legislative function does not mean that it can be performed only while Congress is in session. The President acts legislatively under the Constitution but he is not a constituent part of the Congress.[9] In the *La Abra* case the Court said (*id.* p. 454): "It is said that the approval by the President of a bill passed by Congress is not strictly an executive function, but is legislative in its nature; and this view, it is argued, conclusively shows that his approval can legally occur only on a day when both Houses are actually sitting in the performance of legislative functions. Undoubtedly the President when approving bills passed by Congress may be said to participate in the enactment of laws which the Constitution requires him to execute. But that consideration does not determine the question before us. As the Constitution while authorizing the President to perform certain functions of a limited number that are legislative in their general nature does not restrict the exercise of those functions to the particular days on which the two Houses of Congress are actually sitting in the transaction of public business, the court cannot impose such a restriction upon the Executive". From this point of view, and so far as the character of the President's function is concerned, it obviously makes no difference whether the Congress has adjourned *sine die* or to a day named.

The Court's reasoning in the case cited also meets the objection that if the President may approve bills after adjournment, his action would be free of any limitation of time. The constitutional provision does not admit of such a construction. The intention is clearly shown that in any event the President must act within the prescribed ten days, and the opinion in the *La Abra* case is explicit as to the President's duty in this respect. The Court said (*id.,* pp. 453, 454): "The time within which he (the President) must approve or disapprove a bill is prescribed. If he approve a bill, it is made his duty to sign it. The Constitution is silent as to the time of his signing, except that his approval of a bill duly presented to him—if the bill is to become a law merely by virtue of such approval—must be manifested by his signature

[9]See Note 2.

within ten days, Sundays excepted, after the bill has been presented to him. It necessarily results that a bill when so signed becomes from that moment a law. But in order that his refusal or failure to act may not defeat the will of the people as expressed by Congress, if a bill be not approved *and* be not returned to the House in which it originated within that time, it becomes a law in like manner as if it had been signed by him". But if this limitation of time applies to the President's action when the Congress is in recess, it is apparent that the limitation equally governs his action when the Congress has adjourned. The constitutional provision affords no basis for a distinction between the two cases.

There is nothing in the words of the Constitution which prohibits the President from approving bills, within the time limited for his action, because the Congress has adjourned, and the spirit and purpose of the clause in question forbid the implication of such a restriction. The provision that a bill shall not become a law if its return has been prevented by the adjournment of Congress is apposite to bills that are not signed, not to those that are signed. There is no requirement that bills that are signed should be returned. No further action is required by Congress in respect of a bill which has been presented to the President, unless he disapproves it and returns it for reconsideration as the Constitution provides. We may quote again from the opinion in the *La Abra* case (*id.*): "It has properly been the practice of the President to inform Congress by message of his approval of bills, so that the fact may be recorded. But the essential thing to be done in order that a bill may become a law by the approval of the President is that it be signed within the prescribed time after being presented to him. That being done, and as soon as done, whether Congress is informed or not by message from the President of the fact of his approval of it, the bill becomes a law, and is delivered to the Secretary of State as required by law".[10]

Another objection has been raised that, if the authority of the President to approve bills continues after adjournment of the Congress, an incoming President might approve bills passed during

[10]Compare Seven Hickory *v.* Ellery, 103 U. S. 423; People *v.* Bowen, 21 N. Y. 517; State *ex rel.* Belden *v.* Fagan, 22 La. Ann. 545; Solomon *v.* Commissioners, 41 Ga. 157; Lankford *v.* Commissioners, 73 Md. 105.

the official term of his predecessor.[11] But it does not follow that because an incoming President, to whom a bill has not been presented by the Congress, cannot approve it, that a continuing President, to whom a bill has been presented by the Congress, must be debarred of his opportunity to give his approval within the time which the Constitution has prescribed.

Regard must be had to the fundamental purpose of the constitutional provision to provide appropriate opportunity for the President to consider the bills presented to him. The importance of maintaining that opportunity unimpaired increases as bills multiply. The Attorney General calls attention to the fact that at the time here in question, that is, between February 28, 1931, and noon of March 4, 1931, 269 bills were presented to the President for his consideration, 184 of which were presented to him during the last twenty-four hours of the session. No possible reason, either suggested by constitutional theory or based upon supposed policy, appears for a construction of the Constitution which would cut down the opportunity of the President to examine and approve bills merely because the Congress has adjourned. No public interest would be conserved by the requirement of hurried and inconsiderate examination of bills in the closing hours of a session, with the result that bills may be approved which on further consideration would be disapproved or may fail although on such examination they might be found to deserve approval.

In the instant case, the President, to whom the bill was presented, approved it within the time prescribed by the Constitution, and upon that approval it became a law. The question certified is answered in the affirmative.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

[11]See opinion of Chief Justice Richardson in United States *v.* Weil, 29 Ct. Cls. 523, 549.